IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 12772 of 2007(U)

PETITIONER:

FATHIMMA MEMORIAL EDUCATIONAL TRUST,
(ORIENTAL COLLEGE OF TEACHER EDUCATION),
POONATH-PO, NADUVANNOOR-VIA, CALICUT DISTRICT,
REPRESENTED BY ITS SECRETARY SHOUKATHALI.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

1. UNIVERSITY OF CALICUT,
REPRESENTED BY THE REGISTRAR, THENJIPALAM,
CALICUT.

2. THE VICE CHANCELLOR, UNIVERSITY OF
CALICUT, CALICUT.

BY SHRI.P.C.SASIDHARAN, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON 22.6.2007 DELIVERED THE FOLLOWING:

W.P(C).No. 12772/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE JUDGMENT IN W.P.C.NO.33988/05 OF THIS COURT.

P2. COPY OF THE ORDER DTD.23.10.2006.

P3. COPY OF THE APPLICATION TO.R1 DTD.26.10.2006.

P4. COPY OF THE CHALAN RECEIPT DTD.26.10.2006.

P5. COPY OF THE REQUEST DTD.27.10.1006.

P6. COPY OF THE REQUEST DTD.27.10.2006 FOR ALLOTMENT OF STUDENTS.

P7. COPY OF THE N.O.C. DTD.14.3.2003 BY THE UNIVERSITY.

P8. COPY OF THE COMMUNICATION DTD.10.2.2006 OF THE UNIVERSITY.

P9. COPY OF THE JUDGMENT IN W.P.C.NO.28451/2006 OF THIS COURT.

P10. COPY OF THE JUDGMENT IN W.A.NO.2186/2006 OF THIS COURT.

P11. COPY OF THE COMMUNICATION DTD.23.12.2006.

P12. COPY OF THE ORDER DTD.14.2.2007.

P13. COPY OF THE AFFIDAVIT FILED IN CONTEMPT CASE NO.60/2007 DTD.14.3.2007.

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.12772 of 2007

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Dated this the 22nd day of June, 2007

J U D G M E N T

This is the seventh litigation the petitioner had to embark upon for getting its B.Ed. college approved by the authorities concerned. Initially, the obstacle was in getting NOC from the Government of Kerala for starting the college. After two writ petitions, when the said obstacle was overcome, the turn came for the National Council for Teacher Education (NCTE) to refuse to consider the petitioner's application for recognition. A writ petition and a contempt case thereafter, the NCTE granted recognition for the academic session 2006-07 with an intake of 100 students, by Ext.P2 order dated 23.10.2006. Thereafter, the petitioner submitted an application to the 1st respondent University for affiliation. When University did not respond to the petitioner's application for

affiliation, the petitioner filed W.P(C). No.28451/2006, which was dismissed on the ground that since classes have already commenced for the academic year 2006-07, the petitioner can pursue the remedy for the next academic year. The petitioner challenged that judgment by filing W.A.No.2186/2006. By Ext.P10 judgment, the writ appeal was closed recording the submission of the counsel appearing for the University that the concerned authority would pass orders on the application made by the petitioner with regard to affiliation latest by 31.12.2006, for the next academic session 2007-08. However, by Ext.P11 communication, the application for affiliation was rejected stating three reasons, viz., (1) the University requires Government concurrence for granting affiliation, (2) the Government have informed that as a matter of policy it has been decided not to grant sanction for staring new self financing colleges and (3) that the admission to B.Ed. for 2006-07 academic year was closed on 27.1.2006. Contending that the said decision was

in violation of the undertaking given before this court recorded in Ext.P10 judgment, the petitioner moved this court by filing C.O.C.No.60/2007. In the affidavit filed in response to the contempt case, the University contended that it had not considered the application for 2007-08 since there was no application pending for the year 2007-08. Apparently, confronted with the displeasure expressed by the court during hearing of the case, the University deputed an inspection team for assessing the infrastructure facilities of the petitioner's college. It is submitted by the petitioner that even though the committee found that the petitioner has all the required facilities, the syndicate of the University which met on 7.3.2007 decided not to grant affiliation to the petitioner on the ground that the syndicate does not feel the necessity to start new B.Ed. colleges under the self financing scheme in the locality as there are B.Ed. colleges nearby to cater to the needs of the students of the locality. But that decision had not been communicated to the

petitioner. The petitioner came to know of the said decision only from the counter affidavit filed by the University in that contempt case. The petitioner submits that when this was brought to the notice of the Division Bench, the Division Bench orally directed the counsel for the University to furnish a copy of the decision taken by the syndicate of the University. However, in spite of the same, copy of the order was not served on the petitioner. It is under the above circumstances that the petitioner is challenging that decision of the syndicate of the University based on the averments in the affidavit in C.O.C.No.60/2007, producing a copy of the counter affidavit filed by the University in that contempt case. The petitioner is challenging the said decision on the ground that going by the scheme of the N.C.T.E. Act and the Supreme Court judgments on the subject, University has no power to refuse affiliation on the ground that there is no necessity to start a new B.Ed. college under the self financing scheme as there are B.Ed. colleges

nearby to cater to the needs of the students of the locality. The petitioner specifically relies on the decision of *STATE OF MAHARASHTRA v. SANT DNYANESHWAR SHIKSHAN SHASTRA MAHAVIDYALAYA AND OTHERS* reported in (2006) 9 SCC 1, which lays down the law on the subject.

2. The University has filed a counter affidavit in which none of the above facts stated in the writ petition is denied by the University. The only contention of the University is that the Calicut University First Statutes specifically prescribe the procedure to be adopted by the University in granting affiliation to the new colleges and new courses and, the power of the University to refuse affiliation cannot be curtailed by the decision of the N.C.T.E. to grant recognition, in exercise of which power they can independently refuse to grant affiliation if the conditions prescribed under the statutes for granting affiliation are not complied with. The University also specifically relies on a Division Bench decision of this court in *Rural Education &*

Social Trust v. University of Calicut reported in 2007 (2) KLT 609 wherein a Division Bench of this court has held that simply because the University is bound to implement the decision of the NCTE, that does not mean that the University should not follow the statutory provisions. The counsel points out that the Division Bench had specifically referred to the decision of the Supreme Court in *Sant Dnyaneshwar's case (supra)* while deciding as above.

3. I have heard arguments on both sides in detail.

4. From the pleadings and arguments it is clear that the only issue I have to decide in this case is as to whether the 1st respondent University can, under law, refuse affiliation to the petitioner's B.Ed. college on the ground that the University feels that there is no necessity to start new B.Ed. colleges under the self financing scheme as there are B.Ed. colleges nearby to cater to the needs of the students of the locality. There are several decisions of the Supreme Court on the

power of the State and the University to refuse sanction/affiliation for starting a new B.Ed. college. But I need not refer to all of them because in *Sant Dnyaneshwar's case* (supra) the Supreme Court had considered all those decisions while rendering a comprehensive decision dealing with all the aspects of the issue. I shall refer to the relevant portions of the said judgment hereinafter.

5. In paragraphs 62 and 63 of the said judgment the Supreme Court considered the legislative competence of the State Government to legislate on the subject and held that the legislative power to legislate on the subject is exclusively with the Parliament. The said paragraphs read thus:

> "62. From the above decisions, in our judgment, the law appears to be very well settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature

> subject to limitations and restrictions under the Constitution.
>
> 63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinate development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

6. Then in paragraph 64 of the judgment the Supreme Court held that the High Court from whose decision the appeal arises in that judgment was justified in negativing the argument of the State Government that permission could be refused by the state Government on "policy consideration". The said paragraph reads thus:

> "64. Even otherwise, in our opinion, the High Court was fully justified in negativing the argument of the State Government that permission could be refused by the State Government on "policy consideration". As already observed earlier, policy consideration was negatived by this Court in *Thirumuruga Kirupananda Trust* as also in *Jaya Gokul Educational Trust*."

7. In paragraph 68 of the judgment the

Supreme Court held that the N.C.T.E.'s power to grant recognition is not dependent upon the presence or absence of NOC by the State Government/Union territory. The said paragraph reads thus:

> "68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of on-objection certificate by the State Government/Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.

8. Again in paragraph 74 of the said judgment, the Supreme Court held that '<u>it is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission</u>'. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The said paragraph may be extracted below:

> "74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-

> education system "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

(Emphasis supplied)

9. Still further, in paragraph 76 of the judgment, the Supreme Court categorically laid down as follows:

> ".76. .....In accordance with the provisions of the 1993 Act, final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all authorities in the light of the provisions of the Act and the law declared by this Court. It has been so held in *St. Johns Teachers Training Institute* [(2003)3 SCC 321]"

10. In the above decision, the issue revolved around Sections 82 and 83 of the Maharashtra University Act. Relevant portion of Section 82 had been quoted by the Supreme Court as follows;

> "82(1). The University shall prepare a perspective plan, and get the same approved by the State Council for Higher education for educational development for the location of colleges and institutions of higher learning in a manner ensuring equitable distribution of facilities for higher education having due regard, in particular, to the

needs of unserved and underdeveloped areas within the jurisdiction of the university. Such plan shall be prepared by the Board of College and University Development, and shall be placed before the Academic Council and the Senate through the Management Council and shall, if necessary, be updated every year.

(2) No application for opening a new college or institution of higher learning, which is not in conformity with such plan, shall be considered by the university.

(3) The managements seeking permission to open a new college or institution of higher learning shall apply in the prescribed form to the Registrar of the university before the last day of October of the year preceding the year from which the permission is sought.

(4) All such applications received within the aforesaid prescribed time-limit, shall be scrutinised by the Board of College and University Development and be forwarded to the State Government with the approval of the Management Council on or before the last day of December of the year, with such recommendations (duly supported by relevant reasons) as are deemed appropriate by the Management Council.

(5) Out of the applications recommended by the university, the State Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking into account the State Government's budgetary resources, the suitability of the managements seeking permission to open new institutions and the State-level priorities with regard to location of institutions of higher learning:"

(underline supplied)

Considering the validity of the said sections, the Supreme Court in paragraph 80 of the judgment finally held as follows:

"80. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra Universities Act are "null and void" could not be said

> to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by the 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university ("examining body") is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases."

(Underline supplied)

From the above I find that in that case the University had prepared a perspective plan for educational development for the location of colleges and institutions of higher learning and in sub-section 2 of Section 82 it was specifically prescribed that no application for opening a new college or institution of higher learning, which is not in conformity with such plan, shall be considered by the University. Referring to that section only, while holding that the said provisions cannot be held to be null and void as held by the High Court, the Supreme Court held that as per the scheme of the NCTE Act, notwithstanding Sections 82 and 83, once recognition has been granted by the NCTE, the University is obliged to grant affiliation. This would essentially mean that the University cannot

on the basis of lack of need for such college in the locality refuse to grant affiliation.

11. In the present case, the University's case is that the above decision does not in any way fetter the powers of the University to decide the question of affiliation in terms of the statues, which power has been recognised by the Division Bench of this court in *Rural Education & Social Trust's case* (supra). Of course, referring to the Supreme Court decision the Division Bench in that case has held that although the apex court has held that the University is bound to implement the decision of the NCTE, that does not mean that the University shall not follow the statutory provisions. In this connection, I must note another decision of the Supreme Court in *BHARATHIDASAN UNIVERSITY AND ANOTHER v. ALL-INDIA COUNCIL FOR TECHNICAL EDUCATION AND OTHERS* reported in (2001) 8 SCC 676, in paragraph 14 of which, the Supreme Court has held as follows:

> "14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory

> provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, by a myth to state that Regulations made under Section 23 of the Act have "constitutional" and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."

Going by the above decision read with *Sant Dnyaneshwar's case* (supra), it is abundantly clear that the power to make statutes must be confined to the limits prescribed and that cannot overrule the provisions of the NCTE Act. Therefore, construing the Supreme Court judgment and the judgment of the Division Bench of this court harmoniously, it must be held that while the University is certainly competent to decide the question of affiliation in accordance with the procedure prescribed in the

Statute, the University cannot deny affiliation on the basis of a statute which is not in conformity with the NCTE Act. The Supreme Court has categorically held in the decision of *Sant Dnyaneshwar's case* (supra) that the University cannot, on the basis of a policy decision or need of the locality, refuse to grant affiliation. Therefore, even if statutes prescribe such a procedure enabling the University to refuse affiliation on the ground of want of need of the locality, the University cannot, by exercising such powers, deny affiliation.

12. In any event, from the relevant statutes in the Calicut University First Statutes relied on by the University, prescribing procedure to be adopted in granting affiliation of new colleges and new courses, I could not find any provision therein which authorises the University to refuse affiliation on the ground of want of need of the locality. The applicability of those statutes is only in ascertaining whether the college has the infrastructure facilities for running the course.

For this reason also, I do not find any merit in the contentions of the University in this regard. Therefore, I am of view that the decision of the Syndicate of the University refusing to grant affiliation on the ground that the syndicate does not feel the necessity to start new B.Ed. college under the self financing scheme as there are B.Ed. colleges nearby to cater to the needs of the students of the locality is clearly unsustainable. The power of the University under the Statutes in the matter of affiliation is only to see that the colleges concerned have the infrastructure facilities for conducting the course and not for any other purpose like want of local needs. Since the University has no other contention or objection whatsoever against grant of affiliation to the petitioner's college, it is abundantly clear that the petitioner is entitled to the affiliation applied for, for the year 2007-08.

13. In the above circumstances, I direct the respondents to grant affiliation to the petitioner's B.Ed. college pursuant to Ext.P2

approval of the NCTE, as undertaken by the University in Ext.P10 judgment, for the academic year 2007-08 onwards.

14. Before parting with this case, I must note a distressing feature. Three cases have come up before me relating to applications for affiliation by this particular University. In all these cases, the University has steadfastly refused to communicate the decision of the syndicate to the college concerned even after specific directions of this court to do so. One of the cases is W.P(C). No.10662/2007. In the said case although, while allowing the writ petition, in view of the cantankerous attitude of the University I was inclined to award costs, I refrained from doing so exercising restraint. Again another case came up which is still pending in which also the University took the very same cantankerous attitude. Now this is the third case before me in which the petitioner complains of refusal on the part of the University to communicate the decision on their application for affiliation to the petitioner. Along with the

counter affidavit, they have produced a communication, Ext.R1(a), communicating the decision of the University. The petitioner denies having received the same till date. In any event, Ext.R1(a) is dated 21.5.2007 whereas the writ petition was filed on 11.4.2007. In the other case referred to first in this paragraph the University had even refused to divulge the reasons for the refusal of affiliation and took a contention that they are not expected to convey such reasons since it is for the college to find out the defects, cure them and apply again. This cantankerous attitude is certainly unbecoming of a University who is expected to set an example to other institutions. For the above reasons I feel that this University must be made aware of their obligation under law, which is that a person is entitled to know the reasons for refusal of their application and he is entitled to get a copy of the decision in all such cases. In the above circumstances, I award exemplary costs of Rs.15,000/- to the petitioner which shall be paid by the University to the

petitioner within two weeks from the date of receipt of a copy of this judgment. I also make it clear that this shall not be debited to the University funds and shall be recovered from the person(s) responsible after giving notice to such person(s).

Writ petition is allowed as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.